

Form 16A. CAPTION (FULL)

'06 MAR 15 A8:55

United States Bankruptcy Court

Portland District Of Oregon

LODGED \_\_\_\_\_ REC'D \_\_\_\_\_  
PAID 0 DOCKETED \_\_\_\_\_

In re EDWARD J. MERRALL )  
[Set forth here all names including married, )  
maiden, and trade names used by debtor within )  
last 8 years.] )

Debtor

Case No. 05-48761-tmb7

Address P.O. BOX 617 )

JOHN DAY, OR 97845 )

Chapter 7

Last four digits of Social Security No(s): 9367 )

Employer's Tax Identification No(s). [if any]: N/A )

COMPLAINT  
ADVERSARY PROCEEDING  
06-3142-TMB

[Designation of Character of Paper]

Adversary Proceeding to determine the dischargeability of  
student loan debt as defined in 11 USC § 523(a)(8).

I.

Jurisdiction is provided by 28 USC § 1334  
28 USC § 157(b)(1)  
28 USC § 157(b)(2)(1)

II.

Plaintiff/Debtor has continuously resided in the State of Oregon since 1989, and is currently a resident of Grant County, Oregon.

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III.

Plaintiff asserts and maintains the following:

The factual matters in this case may present a matter of first impression

The facts when presented at trial will demonstrate and support that if Plaintiff is barred from discharging his student Loan debt it will impose on-going undue hardship on him.

Plaintiff was awarded a B.S. Degree in Wildlife Science in March 1995.

Plaintiff filed a civil action in Benton County District Court against said entity (OSU) in 1996 for violations of Oregon and Federal labor law.

Plaintiff subsequently prevailed in that action.

Plaintiff has, in fact, endured on-going undue hardships, in a variety of ways, since prevailing in that action in 1996.

Plaintiff will present, at trial, sufficient evidence of said hardships.

As a result of prevailing in the aforementioned civil action Plaintiff has been effectively 'blacklisted' by employees/agents of Oregon State University (OSU).

1  
2 Notwithstanding Plaintiff's demonstrable superior qualifications and his continuously  
3 diligent and rigorous efforts to secure employment in his newly chosen field he has been  
4 unable to secure employment in said field of endeavor.

5  
6 Plaintiff has held only two temporary positions since maturation of his Student Loan  
7 debt.

8  
9 Plaintiff's peers, of significantly younger age cohort, have had no difficulty securing  
10 employment in the same field of endeavor as Plaintiff.

11  
12 Plaintiff was, in fact, homeless and grossly underemployed from January, 1996 until  
13 April, 2000.

14  
15 Due to said circumstances Plaintiff was unable to mount any good faith effort to repay his  
16 student loan debt.

17  
18 Plaintiff has realized no benefit from the educational experience he duly completed in  
19 1995 and for the foreseeable future he will derive none.

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21 Plaintiff respectfully submits that the evidence will support that he can meet the three  
22 prong test imposed by the 9<sup>th</sup> Circuit Court of Appeals in In re Pena 155 F.3d 1108 (9<sup>th</sup>  
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1 Cir, 1998) and Brunner v. New York State Higher Education Services Corp., 831 F.2d  
2 395 (2<sup>nd</sup> Cir. 1987).

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6 Whereas, Plaintiff asserts that the evidence presented at trial will prove the imposition of  
7 undue hardship upon him as briefly described above, he prays that the Court provide him  
8 relief in the form of discharge of his total Student Loan debt in the amounts previously  
9 set forth in his Amended/Supplemental Schedules E, F, and Summary Schedule. Plaintiff  
10 incorporates by reference herein said Amended/Supplemental Schedules and makes them  
11 a part of this Complaint.

12 *Respectfully submitted.*

13 Edward J. Merrill, Pro se

March 13, 2006

14 P.O. Box 617

15 John Day, OR 97845

16 541-575-5538

17  
18 I, Edward J. Merrill do hereby certify that I will immediately serve a true and exact copy  
19 of this Complaint upon the duly authorized representatives of all Defendants specified in  
20 the Caption of this Complaint via USPS Certified Mail and upon completion of said  
21 service provide Proof of such Service of Process to the Clerk of the Court.

22 Edward J. Merrill, Pro se

March 13, 2006

B 104 (Rev. 2/92)		<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only) <b>06-3142-TMB</b>
<b>PLAINTIFFS</b> EDWARD J. MERRALL, DEBTOR '06 MAR 15 A8:55 LOGGED _____ REC'D _____ FAID _____ DOCKETED _____		<b>DEFENDANTS</b> United States Dept of Education Sallie Mae Servicing Corp. Oregon State University Educational Credit Management Corp. any other assignor and/or guarantor		
ATTORNEYS (Firm Name, Address, and Telephone No.) Phone # 541-575-5538, 620-4363 EDWARD J. MERRALL, PRO SE P.O. BOX 617 JOHN DAY, OR 97845		ATTORNEYS (If Known) unknown		
<b>PARTY</b> (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input checked="" type="checkbox"/> 2 U.S. DEFENDANT <input type="checkbox"/> 3 U.S. NOT A PARTY				
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) ① Adversary Proceeding to determine the dischargeability of student loan debt in accordance with the provisions of 11 USC § 523(a)(8) due to imposition of undue hardship. ② Jurisdiction is found at 28 USC § 1334, § 157(b)(1) and (b)(2)(1).				
<b>NATURE OF SUIT</b> (Check the one most appropriate box only.)				
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> 454 To Recover Money or Property  <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property  <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property  <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727         </div> <div style="width: 33%;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan  <input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523  <input type="checkbox"/> 434 To obtain an injunction or other equitable relief  <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan         </div> <div style="width: 33%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action  <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court  <input type="checkbox"/> 498 Other (specify)         </div> </div>				
<b>ORIGIN OF PROCEEDINGS</b> (Check one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23				
<b>DEMAND</b> \$ 56,8200.00		<b>OTHER RELIEF SOUGHT</b> Discharge of Student Loan Debt		<input type="checkbox"/> <b>JURY DEMAND</b> Check only if demanded in complaint
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>				
<b>NAME OF DEBTOR</b> EDWARD J. MERRALL		<b>BANKRUPTCY CASE NO.</b> 305-48761-Tmb7		
<b>DISTRICT IN WHICH CASE IS PENDING</b> PORTLAND, OREGON		<b>DIVISIONAL OFFICE</b> PORTLAND		<b>NAME OF JUDGE</b> Irish M. Brown
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>				
<b>PLAINTIFF</b> [Signature]		<b>DEFENDANT</b> [Signature]		<b>ADVERSARY PROCEEDING NO.</b>
<b>DISTRICT</b> [Signature]		<b>DIVISIONAL OFFICE</b> [Signature]		<b>NAME OF JUDGE</b>
<b>FILING FEE</b> (Check one box only.) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED				
<b>DATE</b> [Signature]		<b>PRINT NAME</b> [Signature]		<b>SIGNATURE OF ATTORNEY (OR PLAINTIFF)</b> [Signature]